DOCUMENT RESUME

ED 075 371 SP 006 325

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TITLE Insubordination: Do You Know Your Rights?
NOTE 8p.

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS Discipline; Due Process; *Teacher Behavior; *Teacher Discipline; *Teacher Dismissal; *Teacher Evaluation; *Teacher Welfare

ABSTRACT

The rights of a teacher in relation to insubordination are discussed in this document. Emphasis is placed on the definition and examples of insubordination. The conclusion summarizes the procedures of insubordination and a teacher's rights when charged with insubordination: procedures include a preliminary investigation, establishment of probable cause and the building of the case for dismissal, and the deliverance of a specific written notice of the charges to the teacher; teacher rights include the provision of a hearing before a quorum of the school committee upon the presentation of evidence and stated grounds for dismissal. The conclusion also states that, in addition to a hearing, courts expect that the teacher has had ample forewarning of the charges. (MJM)

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ED 075371

Insubordination:

Do You Know Your Rights?

by

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SP 006 325

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Under established legislative policy, school committees are given general management of the public schools including the election and dismissal of teachers. Such committees have administrative control of school systems and are responsible for the proper functioning of the schools.

The courts have also specified that the power of management placed by the statutes in school committees and the statutory powers of school committees to discharge teachers are to be broadly construed.

Dismissal of a teacher (the termination of the teacher's services by a board of education prior to the lawful expiration of his contract) can be effected for a number of lawful reasons. In most states, the statutes provide for the dismissal of teachers for reasons of insubordination, immorality, unprofessional conduct, incompetency, and other "good cause." (Davis v. School Committee of Somerville, 30 N.E. 2d. 401)

"Good cause" within the statutes authorizes the dismissal of a teacher employed at the discretion of the school committee and

> includes any ground put forward by the school committee in good faith which is not arbitrary, irrational, unreasonable, or irrelevant to the committee's task of building up and maintaining an efficient school system, and cause assigned is sufficient if it is at least fairly debatable and asserted honestly and not as a subterfuge. (Rinaldo v. Dreyer, 1 N.E. 2d. 37)

It should be noted that in a good many cases, little distinction is made between dismissal for insubordination per se, or dismissal for "willful neglect of duty," incompetence, or other "good cause." In other words, a great deal of overlapping occurs in that, what may be construed in one district as insubordination may be called "willful neglect of duty" in another, etc. Consequently, the particulars of each dismissal case should be examined and evaluated on an individual basis.

Insubordination Defined

As used in Teacher Tenure Law, the phrase "willful and persistent insubordination" means a constant or continuing intentional refusal to obey a direct or implied order which is reasonable in nature and which has been given by and with proper authority. (Shockley v. Board of Education, Laurel Special School Dist., 149A. 2d. 331)

More generally, insubordination is constituted by persistent violation of or refusal to obey the school laws of the state and reasonable regulations of the school board, (Los Angeles Bd. of Educ. v. Swan, 261 P. 2d. 261), or for negligence in the discharge of a teacher's duties. (School District v. McCoy, 1 P. 97)

Reasonable v. Unreasonable Rules

It is, therefore, obvious that a teacher is not obliged to obey an unreasonable rule of the school committee. The crux of the matter, then, is for the courts to decide whether or not a rule or request of the school committee is reasonable. For example:

In a 1963 Pennsylvania case, Johnson v. United School Dist. Joint School Bd., 191 A. 2d. 897, it was stated that

> Refusal of a teacher without excuse to attend "open house" though required and repeatedly directed to do so, constituted an act of negligence and persistent and willfull violation of school laws.

Cited in a 1969 Utah case, Brough v. Bd. of Educ. of Millard County School Dist., 460 P. 2d. 336, is a statement concerning the transfer of a teacher to another school and grade level.

> A teacher is obliged to accept transfer when reasonably requested to do so and refusal constitutes insubordination.

In a 1962 Louisiana decision, State ex rel. Williams v. Avoyelles Parish School Bd. 147 So. 2d. 729, an example of the extent to which reasonableness can be construed is cited.

> An order given to a high school industrial arts teacher, along with his students as a school project, to build the forms to be used in pouring a sidewalk at the school was not unreasonable, arbitrary or capricious, and the teacher's refusal to obey the order constituted proper ground for the dismissal of the teacher for willful neglect of duty.

On the other hand, the courts have the power to make judgements with respect to the consistency of the punishment imposed by a school board in terms of the seriousness of the teacher's infraction. An example is cited in a 1962 New York case, Moser v. Bd. of Educ. of Union Free School Dist., 230 N.Y.S. 2d. 298, in which is found:

> Established charges that the music teacher had failed to report to assist in supervision of a student examination and had failed to maintain a complete "plan book" did not warrant dismissal, but only a 3-month suspension.

Further Examples of Insubordination

Insubordination or "willful neglect of duty" can assume many forms. A great number of cases exist whereby teachers, principals, or superintendents have been dismissed because of their refusal to answer questions under oath concerning membership in communist party organizations or refusal to answer questions of loyalty to the United States by invoking the 5th Amendment of the Constitution. The courts have been very explicit in cases of this nature as is exemplified in a 1963 Pennsylvania case, Board of Public Education, School District of Philadelphia v. August, 177 A. 2d. 809.

> A school employee owes a duty of frankness to his superiors and is obliged to cooperate and may be dismissed because of insubordination and lack of frankness, candor, and intellectual honesty.

Another example which constitutes "willful neglect of duty" in a slightly different sense is found in a 1964 Louisiana court decision, Tichenor v. Orleans Parish School Board, 144 So. 2d. 603. This case describes a teacher's "my classroom is my castle" attitude in his refusal to allow his superiors to supervise him. The court stated:

> Refusal of a teacher to allow supervisory personnel to enter his classroom even after he was advised that school regulations required him to do so constituted "willful neglect of duty" and justified dismissal.

Rights of Teachers re: Insubordination

As noted in the case above, the courts do expect that teachers be warned of their deficiencies so that the teacher has the opportunity

to correct the inadequacy if it is remediable. The courts explicitly specify that the teacher should be thus forewarned in order to insure that school committees do not act in an arbitrary manner in dismissing a teacher.

An example of this exigency is cited in a 1964 Louisiana decision, Lewing v. DeSoto Parish School Board, 113 So. 2d. 462. It states:

> In proceeding for the removal of a school teacher for "willful neglect of duty," the school board acted arbitrarily in deciding that the teacher had been habitually late for school over a long period of time, in the absence of a warning to the teacher by her superiors and an opportunity to correct her alleged tardiness.

In certain instances a teacher may decide to forego his right to a bill of particulars which entitles him to a precise specification of grounds for his impending dismissal. It is obvious in some instances that the teacher would rather have the reasons for his dismissal, as a matter of record, rather vague. The courts allow for such situations as can be found in Duffy v. School Committee of Town of Hopkinton, 127 N.E. 540, a 1920 Massachusetts case. We find:

> Information given to a high school teacher in a town by the school committee, at her request, that reasons for which her dismissal was proposed were "conduct unbecoming a teacher and insubordination" was sufficient compliance with the law in the absence of a demand for specifications.

On the other hand, if a demand for specifications is made by the teacher, principal, or superintendent, with respect to the grounds for his impending dismissal, statutes specify his right to a hearing.

This fact is referred to in a 1938 Massachusetts case, Graves v. School Committee of Wellesley, 12 N.E. 2d. 176, where it is specified that by statute (in relation to the dismissal of school teachers and superintendents) a hearing is required upon evidence by the school committee.

Statutes also provide for a quorum of the school committee to be present at such a hearing. Thus, as found in the 1944 Massachusetts case, Perkins v. School Committee of Quincy, 51 N.E. 2d. 978:

> The statutory requirements for a two-thirds vote of the whole school committee for dismissal of a teacher serving at discretion and for a hearing upon proposed dismissal before the committee imply that a "quorum" of the committee for purpose of such a hearing must consist of not less than two-thirds of the whole committee.

In Conclusion

Teachers are required to obey reasonable rules and regulations of the school board. Insubordination is usually thought of as the willful refusal of a teacher, principal, or superintendent to obey those reasonable regulations put forth by the board. Consequently, teachers who are continually disdainful may "wear out the patience" of their superiors and may be dismissed for insubordination.

Although specific dismissal procedures vary from one school system to another, certain steps are usually required. They are: a) a preliminary investigation; b) the establishment of probable cause and the building of the case for dismissal; and c) the delivering of a specific written notice of charges to the teacher.

It should be noted that little distinction is made between tenured and non-tenured teachers, principals, or superintendents but it is obvious that a tenured teacher's dismissal is given closer scrutiny by the courts. Great discretionary latitude is employed by the courts in determining the reasonableness of the violated school board rule or regulation.

The teacher also has the right, by statutory provision, to a hearing before a quorum of the school committee upon the presentation of evidence and stated grounds for dismissal. The courts also expect that the teacher has had ample forewarning if his insubordination is the result of continual or persistent neglect of duties and that the stated infractions are remediable.